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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,504	05/15/2002	David Williams	HUMT.68040/05	3270
7590 05/21/2004				
Attn: James H. Riley II SHOOK, HARDY & BACON L.L.P. Suite 1600 600 Travis Street Houston, TX 77002-2911		EXAMINER SAYALA, CHHAYA D		
		ART UNIT 1761		
		PAPER NUMBER		
		DATE MAILED: 05/21/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/058,504	Applicant(s) WILLIAMS, DAVID	
	Examiner C. SAYALA	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, "animal" has no proper antecedent basis because claim 9 recites 'animals'.

The same is true of claims 11-16. This may be overcome by changing "said" to --the--.

In claim 17, which depends from claim 9, "the number of pigs" lacks antecedent basis because claim 9 does not recite 'pigs'.

Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-10 are rejected under 35 U.S.C. 102 (b) as being anticipated by GB 1263841.

The patent shows an animal feed ingredient, lignite in the same "effective amount" as claimed herein. See example 1, page 4, cols. 1 and 2. Note that this claim reads on one element, "a *naturally occurring source* of humic acids and fulvic acids" (emphasis added) and that the use terminology, "animal feed ingredient" carries little or no weight. In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

4. Claims 11-18 are rejected under 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103 (a) as obvious over GB 1263841.

The amounts of lignite with respect to feed for cattle are shown at Table 1 and Table 2. The advantage of feeding such an ingredient is shown at col. 2, lines 70-77 at page 1. Even though the patent mentions pigs at line 55, on page 1, and discloses scouring, growth rate and feed conversion efficiency in terms of the frequency of infliction of diseases, weight gains and feed efficiency, respectively, this disclosure is considered the same or similar to the claimed limitations and as such, this rejection is being made under both statutes.

5. Claims 1-6, 9-10 are rejected under 35 U.S.C. 102 (b) as being anticipated by Lown (US Patent 5626881).

Lown teaches that humic acids are found in lignite, leonardite, brown coals, peat, etc, contain humins, humic acid and fulvic acid. Lown also teaches that this has been added to the feed of poultry and livestock and other animals to promote growth, promote better health and decrease mortality rates. See col. 3, lines 15-21, lines 34-42, lines 65-67, col. 4, lines 1-3. See col. 1, lines 55-60 wherein nutrients are added.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-8, 11-18 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Lown in view of GB '841.

Lown does not teach amounts in claims 7-8, does not teach scouring being reduced in pigs, although in col. 1, line 36, the patent does disclose that humus is anemia preventive for newborn pigs. Amounts of the two acids in humates vary according to the source and locations from where they are obtained. See col. 1, page 2, lines 44-51 in '841. It would have been obvious to adjust amounts based on such teachings in '841 and to practice the invention as taught by Lown based on such adjusted amounts, since both patents are drawn to the same subject matter.

7. Claims 4-5 are rejected under U.S.C. 103 (a) as being unpatentable over GB 1263841 in view of Lown.

GB '841 does not teach leonardite or humans. Lown teaches that humans and leonardite are equivalent to lignite and peat and occur naturally, and are used as a feed additive in poultry and livestock feed. See col. 3, lines 15-40, lines 65-67, col. 4, lines 1-5. It would have been obvious to use these substances as equivalents, for the same purpose.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See col. 7, lines 1-10 in US Patent 5755852; col. 3, lines 25-35 in US Patent 4134749; col. 2, lines 20-30, 55-65 and claims in US Patent 2926085; and US Patent 5411569.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.